

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

WILLIS ANDREA JONES,)
)
Petitioner,)
)
v.) 1:11CV52
)
STATE OF NORTH CAROLINA,)
)
Respondent.)

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a state prisoner, has submitted a document entitled as a "Writ of Supervisory Control and Federal Question Jurisdiction 28 U.S.C.A. 1331." In that document, he states that the Durham County Superior Court erred in sentencing him in cases 99 CRS 69670 and 00 CRS 4146. He states that he has attempted to raise these errors in various ways in the North Carolina Courts to have them corrected, but that his attempts have been rebuffed. He seeks to have this Court either order the North Carolina Court of Appeals and/or Durham County Superior Court to act or to simply issue an order that he be released.

The document that Petitioner has filed is not a proper method for achieving his goals. This Court does not have, as Petitioner appears to believe, supervisory power over the courts of North Carolina. Nor does it police violations of state law. Further, if Petitioner feels that his federal constitutional rights have been violated, he must bring his claims in a petition for

writ of habeas corpus pursuant to 28 U.S.C. § 2254. Therefore, this Court will treat his current submission as such a petition.

Unfortunately for Petitioner, this petition cannot be further processed because court records reveal that Petitioner has already attacked the same conviction and sentence in a previous § 2254 petition [1:03CV384]. Consequently, Petitioner must apply to the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current petition. This is required by 28 U.S.C. § 2244(b)(3)(A). *See* AO 241 (MDNC 3/97), *Instructions*, paragraph 5. Because of this pleading failure, this particular petition should be dismissed. *In forma pauperis* status will be granted for the sole purpose of entering this Recommendation and Order.

IT IS THEREFORE RECOMMENDED that this petition be dismissed for failure to apply to the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current petition as is required by 28 U.S.C. § 2244.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Recommendation and Order.

IT IS FURTHER ORDERED that the Clerk shall send Petitioner a copy of this Recommendation and Order, instruction forms for filing § 2254 petitions in this Court and for filing a Motion for Authorization in the United States Court of Appeals for the Fourth Circuit, an application to proceed *in forma pauperis* (upon request), and four copies of § 2254 petition forms (more copies will be sent on request). Petitioner should keep the

original and two copies of the § 2254 petition which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

/s/ P. Trevor Sharp

United States Magistrate Judge

Date: January 26, 2011